

## **EXHIBIT B**

Reported by:  
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1 And you were in attendance at that E and E session,  
2 weren't you?

3 A. Yes.

4 Q. Were you involved in any form of communication to the holders  
5 regarding the outcome of that E and E?

6 A. There was a call with holders subsequent to the E and E to  
7 discuss what happened.

8 Q. And when was that call?

9 A. I don't remember the exact date. It was probably early  
10 February.

11 Q. And who were the parties to that call?

12 MR. WAHL: I object on the basis that we  
13 have previously discussed, and would be willing to discuss  
14 confidentiality arrangements with you.

15 MR. BRENNAN: Well, let's do this: If I  
16 understand your proposal before, Ned, which is kind of  
17 following up on mine, if we were to agree that we would enter  
18 into a formal stipulated protective order to be presented to  
19 the Court that would have as its essential elements that for  
20 those matters that were appropriately deemed and designated  
21 by the parties who have a production of information  
22 requirement as being confidential, that the parties would  
23 treat such information as confidential; i.e., the information  
24 would not be used for any purpose outside the litigation and  
25 the information would be limited to persons in the employ of

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5 **REDACTED**

6 **-Pursuant to Protective Order-**  
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11 A. Yes.

12 Q. So the question I just asked, just so we're all on the same  
13 page, was who were the participants in the call that followed  
14 the January 11, 2008, notices. And so those three  
15 representatives of holders and then yourself?

16 A. Myself, Michael Fisco, and Abby Wilkinson.

17 Q. And what was discussed during that call?

18 MR. WAHL: I'm going to instruct the  
19 witness not to disclose privileged information. We would  
20 assert that the communications are protected by the  
21 attorney/client privilege. She can describe them in a level  
22 of generality that allows you to know broadly what was  
23 discussed.

24 MR. BRENNAN: Well, you know, as one  
25 political figure once said, A half a loaf is better than

1 none. But before we default to that position, can I  
2 understand what the basis is for the assertion of the  
3 attorney/client privilege?

4 MR. WAHL: Sure. There is a joint  
5 defense privilege that would include the three holders and  
6 U.S. Bank Trust. They have an identity of interests because  
7 the bank only functions according to the directions of the  
8 holders.

9 MR. BRENNAN: Let me ask this to the  
10 witness:

11 Q. (BY MR. BRENNAN) Has U.S. Bank Trust National Association or  
12 U.S. Bank National Association or any of its affiliates,  
13 parents, holding companies, et cetera, entered into a written  
14 joint defense agreement with any of the holders?

15 A. No.

16 Q. Is there an oral joint defense agreement that's been  
17 negotiated between U.S. Bank, as I broadly identified it, and  
18 any of the holders?

19 A. No.

20 MR. BRENNAN: I guess -- I think that's a  
21 problem for you -- I'm saying this to Counsel -- to make that  
22 assertion. Without a joint defense agreement, I think the  
23 Federal law is pretty clear on that one.

24 MR. WAHL: You would not be surprised  
25 that I disagree with that.

1 MR. BRENNAN: And I know California law  
2 is directly contrary to that.

3 MR. WAHL: We'll stick to the privilege.

4 MR. BRENNAN: Have I convinced you?

5 MR. WAHL: You are a persuasive man, but  
6 you have not convinced me on this one this time.

7 Q. (BY MR. BRENNAN) Your counsel has asserted an objection. And  
8 I think I need to do this. No disrespect intended for either  
9 of you, but I haven't heard an instruction not to answer.

10 MR. WAHL: I believe I did. I told her  
11 that she could describe the content of the call in a  
12 generalized way without compromising the privilege. As we  
13 would in a privilege log, she may not disclose privileged  
14 information.

15 Again, I want to work with you. I want you to be able  
16 to understand what's happening there, but we have a privilege  
17 to protect.

18 Q. (BY MR. BRENNAN) And are you going to follow Counsel's  
19 instruction and not provide the full information that I've  
20 sought?

21 A. Yes.

22 MR. BRENNAN: And may I have agreement of  
23 counsel that as we move forward, if you make other  
24 instructions in the future, that I need not ask that question  
25 each time, but instead the witness will be deemed to be

1 following your instructions?

2 MR. WAHL: Yes.

3 MR. BRENNAN: Okay.

4 Q. (BY MR. BRENNAN) Tell me what you are willing to tell me  
5 about what was discussed with the holders you identified  
6 during the telephone call that you described.

7 A. We discussed the E and E session, what had transpired there.  
8 We discussed the fact that the company was willing to meet  
9 with the holders after it filed its quarterly financials, and  
10 discussed possible settlement. We asked the holders whether  
11 they were willing to meet with the company. The holders --

12 MR. WAHL: Let me instruct you not to  
13 disclose beyond the generalized description you've already  
14 done.

15 THE WITNESS: Okay.

16 MR. WAHL: And by that, what is customary  
17 is a description of the topic, but not the comments made by  
18 any of the parties involved or the specific analysis or  
19 content of the communications.

20 THE WITNESS: Okay.

21 That's -- I guess that's basically what the discussion  
22 was about.

23 Q. (BY MR. BRENNAN) Have any -- let me back up.

24 U.S. Bank participated in seven conference calls with  
25 various holders, right?

1 A. Yes.

2 Q. And just so you know, I'm looking at what was handed to me a  
3 bit ago, and I think we have enough copies we might as well  
4 mark as our next exhibit. It's a document entitled "U.S.  
5 Bank Trust National Association Supplemental Answers to  
6 Plaintiff Finisar Corporation's First Set of  
7 Interrogatories."

8 MR. WAHL: Let me observe, for example,  
9 that this is something we discussed off the record. You have  
10 a copy that has been signed by Ms. Jacobs, but has not been  
11 signed by counsel with respect to the objection. We will do  
12 so and produce that to you formally in the next couple of  
13 days.

14 MR. BRENNAN: I don't have a problem with  
15 that. Are you going to sign it and just kind of put your  
16 signature and we'll understand?

17 MR. WAHL: I just don't know if that's  
18 kosher in California for me to sign for Tony without him  
19 giving me express permission.

20 MR. BRENNAN: I'm not asking you to sign  
21 for Tony. I'm just asking is there a reason why you're not  
22 willing to sign these?

23 MR. WAHL: I'm perfectly willing to sign  
24 them. I just don't want to sign for Tony.

25 MR. BRENNAN: I guess I would suggest if



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-Pursuant to Protective Order-

A. Yes.

Q. And what was discussed during that call?

MR. WAHL: Again let me caution the witness to describe the call in generalities without compromising the attorney/client privilege.

THE WITNESS: Generally, we discussed the status of the litigation and strategy.

1 Q. (BY MR. BRENNAN) Is that all you're going to disclose to me  
2 regarding what was discussed during that call?

3 A. Yes.

4 Q. Let's turn next to the November 13, 2007, call. Who were the  
5 parties to that call?

6 A. I believe that call was then -- well, the parties I just

7 **REDACTED**  
8 **-Pursuant to Protective Order-**

9 you don't recall the name of?

10 A. Right.

11 Q. And what was discussed during that call?

12 MR. WAHL: Again I'll caution the witness  
13 not to disclose the attorney/client privilege or disclose  
14 information that would violate the privilege, but to describe  
15 the topic in general terms.

16 THE WITNESS: The topic in general terms  
17 was the status of the litigation and strategy.

18 Q. (BY MR. BRENNAN) Can you tell me any more about what was  
19 discussed during those calls?

20 A. That's it.

21 Q. You know, I didn't ask that very well.

22 Will you tell me any more about the status -- or excuse  
23 me -- what was discussed during those calls?

24 A. No.

25 Q. Okay. Let's go to the December 11, 2007, call. Who were the

1 parties to that call?

2 A. All the same parties.

3 Q. As the November 13, 2007?

4 A. Yes.

5 Q. And what was discussed during that call?

6 MR. WAHL: My instruction remains the

7 same.

8 THE WITNESS: Litigation update and

9 strategy.

10 Q. (BY MR. BRENNAN) Will you tell me any more about that call?

11 A. No.

12 Q. Let's turn to the January 14th, 2008, call. Who are the

13 parties to that call?

14 A. All the same parties as the previous two.

15 Q. What was discussed during that call?

16 MR. WAHL: I reiterate my objection and

17 instruction.

18 THE WITNESS: Strategy and the lit --

19 update on the litigation.

20 Q. (BY MR. BRENNAN) Can you tell me any more about that call?

21 A. No.

22 Q. Let's go to January 30, 2008. Who are the parties to that

23 call?

24 A. All the same parties as the previous three.

25 Q. What was discussed?

1 MR. WAHL: My objection and  
2 reiteration -- and instruction are reiterated, rather.

3 THE WITNESS: Aside from the E and E that  
4 we discussed, it was strategy and status of the litigation.

5 Q. (BY MR. BRENNAN) Will you tell me any more about what was  
6 discussed during that call?

7 A. No.

8 Q. Let's go to February 19th, 2008. Who are the parties to that  
9 call?

10 A. All the same parties.

11 Q. What was discussed?

12 MR. WAHL: I reiterate my objection and  
13 instruction.

14 THE WITNESS: Update on the status of the  
15 litigation and strategy.

16 Q. (BY MR. BRENNAN) Will you tell me any more about what was  
17 discussed?

18 A. No.

19 Q. That brings us to the March 11, 2008, call. Who were the  
20 parties to that call?

21 A. They were all the same parties.

22 Q. What was discussed?

23 MR. WAHL: I reiterate my objection and  
24 instruction.

25 THE WITNESS: Strategy and update on the

1 status of the litigation.

2 Q. (BY MR. BRENNAN) Will you tell me any more about what was  
3 discussed?

4 A. No.

5 Q. Other than these telephone conference calls, was there any  
6 other form of communications with the holders other than the  
7 series of notices that I've shown and had marked as exhibits  
8 today? I think those are the April 2007 and the January 11,  
9 2008, notices.

10 A. So you're asking me other than the notices and our calls, was  
11 there any other communication?

12 Q. Right.

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-Pursuant to Protective Order-

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1 Q. (BY MR. BRENNAN) If any of the holders have requested U.S.  
2 Bank to accelerate, why did U.S. Bank not accelerate in  
3 response to a request by any holders?

4 MR. WAHL: I object to the extent the  
5 question calls for attorney/client privileged information,  
6 and instruct the witness not to answer in a way that would  
7 compromise the attorney/client privilege.

8 Can you answer?

9 THE WITNESS: No.

10 MR. BRENNAN: Okay. I'm not going to  
11 burden the record. The same analysis I just described is  
12 going to describe all the instances where the privilege is  
13 asserted.

14 MR. WAHL: Me, too.

15 MR. BRENNAN: Okay.

16 Q. (BY MR. BRENNAN) Has U.S. Bank informed the holders that U.S.  
17 Bank believes that the notes could be accelerated?

18 MR. WAHL: I object to the extent that  
19 the question calls for attorney/client privileged  
20 information.

21 I instruct you not to answer to the extent that it  
22 would compromise the privilege. Answer if you can do --  
23 answer if you may without doing so. Is that clear?

24 THE WITNESS: Yeah.

25 Repeat the question, please.

1 MR. BRENNAN: I'm going to have the  
2 reporter read it back. She'll get it right.

3 (Question on Page 138, Lines 16  
4 through 17, read by the  
5 reporter.)

6 MR. WAHL: Do you understand the  
7 objection?

8 THE WITNESS: Yes. I think I can't  
9 answer.

10 Q. (BY MR. BRENNAN) Okay. What's your answer?

11 A. No. I said I think I can't answer.

12 MR. WAHL: Cannot.

13 THE WITNESS: Cannot.

14 Q. (BY MR. BRENNAN) And is that because of privilege?

15 A. Yes.

16 Q. Let me ask you this: As I understand your prior answers,  
17 U.S. Bank or U.S. Bank Trust National Association had not  
18 entered into either a written joint defense agreement nor has  
19 an oral agreement for joint defense been agreed upon with any  
20 of the holders. Is that right?

21 A. That's right.

22 Q. Has U.S. Bank discussed with the holders the concept of a  
23 joint defense agreement?

24 A. I don't think so.

25 MR. WAHL: I was going to object to that

1 identity interest?

2 MR. WAHL: In this setting, they are a  
3 holder participating in the call.

4 MR. BRENNAN: I mean, anyone could have  
5 called in on this thing -- right? -- because they haven't  
6 verified that they're a holder. And so I'm -- I'm even  
7 searching the indicia of confidentiality for those who have  
8 verified that they have a protective interest.

9 MR. WAHL: I understand your position.  
10 We're asserting the privilege.

11 Q. (BY MR. BRENNAN) Have you told me everything about the calls  
12 with the holders or purported holders that you're willing to  
13 disclose to me today?

14 A. Yes.

15 Q. And you have more information, but you're not disclosing it  
16 because of the claimed privilege; is that right?

17 A. That's right.

18 Q. Okay. I'm going to circle back to something I asked you a  
19 little bit about this morning.

20 As I recall, you thought that currently on your plate,  
21 as it were, you had about 20 accounts that are in some form  
22 of default. Is that true?

23 A. Yes.

24 Q. And of those 20, how many of them involve a claimed failure  
25 by the note-issuing company to make timely filings of SEC



1                                   **REDACTED**  
2                                   **-Pursuant to Protective Order-**

3 A.   Oh, could be.

4 Q.   Okay.   But you're not sure?

5 A.   I'm not positive.

6 Q.   Okay.   Also, just making sure that we're clear on the  
7       subject, when I asked you earlier whether any of these  
8       holders you had identified had ever requested acceleration,  
9       did they in fact make a demand -- any of them make a demand  
10      upon U.S. Bank to accelerate under the notes?

11                               MR. WAHL:   I'm going to -- it's a  
12      sensitive area for attorney/client privilege.   I let you ask  
13      that question before.

14                               What's the exact question?

15   (Question on Page 149, Lines 6  
16   through 10, read by the  
17   reporter.)

18                               MR. WAHL:   You can answer that "yes" or  
19      "no."

20                               THE WITNESS:   No.

21 Q.   (BY MR. BRENNAN) Did any of them explain why they were not  
22      demanding that U.S. Bank accelerate?

23                               MR. WAHL:   I'm going to instruct you not  
24      to answer to the extent that the answer would require you to  
25      divulge attorney/client privileged information.   Answer if

1 you can without doing so.

2 THE WITNESS: I'm trying to go through  
3 all the details of the conversation. I think I can't answer.

4 MR. WAHL: Cannot?

5 THE WITNESS: Cannot. I'm sorry.  
6 Cannot.

7 MR. BRENNAN: I'm going to have the  
8 reporter mark as our next exhibit in order a collection of  
9 documents that appear to be a combination of e-mails and  
10 their attachments. They bear production identifiers USB FIN  
11 000396 through 000405 inclusive.

12 (Exhibit No. 15 marked  
13 for identification.)

14 Q. (BY MR. BRENNAN) Ms. Jacobs, you've been handed what's been  
15 marked as Exhibit 15. I'll give you a moment to look at it.  
16 My question is if you can tell me what Exhibit 15 is.

17 A. So your question is whether I recognize this?

18 Q. Well, the question is if you can tell me what it is.

19 A. This looks like an e-mail trail starting with someone named  
20 Jean Clarke. I'm trying to figure out who wrote this part  
21 here (indicating).

22 Q. It's probably been redacted, right, so we can't tell?

23 A. Well, it's just "Sincerely" and there's nothing there.

24 Yeah, it says redacted down here (indicating). So I'm  
25 not sure about who this is from, but I see that Jean Clarke

1 A. U.S. Bank hasn't been harmed. We're a fiduciary for the  
2 bondholder, so we're concerned about the holder's interests.

3 Q. How have the holders been harmed?

4 A. Well, specifically I'd have to ask them. But they've gone a  
5 year without any meaningful financial information, so it's --  
6 imagine they could be harmed.

7 Q. Have any of the holders indicated to U.S. Bank that they've  
8 been harmed?

9 MR. WAHL: Object to the extent it calls  
10 for the conclusion of attorney/client privileged information.

11 Answer if you're able without compromising the  
12 privilege.

13 THE WITNESS: Yeah, I guess it's -- I'll  
14 have to say I can't answer that.

15 Q. (BY MR. BRENNAN) So you're not able to provide me any  
16 information in terms of how the holders may have been harmed  
17 as a result of Finisar's not making certain SEC filings until  
18 December 4, 2007?

19 A. Yeah. I can just say they have been not happy that they have  
20 been without financial information.

21 Q. Have any of them told you that?

22 A. They have expressed that, yeah.

23 Q. What have they said?

24 MR. WAHL: Let me make the same  
25 objection. Past answering that on a "yes" or "no," if you

1 can answer without disclosing privileged information, do so.

2 THE WITNESS: I don't think I can say

3 more than that.

4 Q. (BY MR. BRENNAN) Which holders have told you that?

5 A. All of them.

6 Q. All holders?

7 A. Well, the three.

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15 Q. (BY MR. BRENNAN) And tell me as precise as you can what each

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17 that regard.

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MR. WAHL: Let me instruct you not to

19 answer if it would disclose privileged information.

20

THE WITNESS: Yeah, I can't answer any

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further than what I've just said.

22 Q. (BY MR. BRENNAN) To your knowledge, have any of the holders

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or reported holders suggested to U.S. Bank -- excuse me --

24

suggested to Finisar Corporation that if Finisar would pay

25

them certain sums of money, they would in essence look past

1 this problem?

2 MR. WAHL: You're asking if they've told

3 Finisar that?

4 MR. BRENNAN: Yes.

5 THE WITNESS: And you're asking if the

6 holders told me that they told Finisar?

7 Q. (BY MR. BRENNAN) That or if you have some other basis of  
8 knowing.

9 A. To believe that they've told Finisar?

10 MR. WAHL: Object to the form.

11 Answer if you can.

12 Q. (BY MR. BRENNAN) Yes.

13 A. I have no knowledge of that.

14 Q. In any communications with the holders, have they ever raised  
15 the subject with U.S. Bank of wanting Finisar to make some  
16 financial payment to them or other financial compensation as  
17 a result of any delay of making SEC filings?

18 MR. WAHL: I'll object on the basis of  
19 the attorney/client privilege.

20 You may answer if you can do so that without  
21 compromising the privilege.

22 THE WITNESS: I can't answer that.

23 Q. (BY MR. BRENNAN) At all?

24 A. At all.

25 Q. Now, during the period of time that Finisar was conducting

1 MR. WAHL: Object to the form.

2 Answer if you can without compromising the  
3 attorney/client privilege.

4 THE WITNESS: Something that we need,  
5 what do you mean by that?

6 Q. (BY MR. BRENNAN) Well, to meet your fiduciary duty to the  
7 holders. When there's three Federal District Court decisions  
8 that have been issued thus far, indicating that the position  
9 that U.S. Bank has been advocating is erroneous, is there  
10 something that U.S. Bank feels that it needs to meet its  
11 fiduciary duties to its holders relative to Finisar to  
12 discontinue the litigation?

13 MR. WAHL: Object to the form. I also  
14 object to the extent it calls for attorney/client privileged  
15 communication.

16 If you can answer without compromising the privilege,  
17 you can do so.

18 THE WITNESS: I don't think I can answer  
19 without compromising the privilege.

20 Q. (BY MR. BRENNAN) Have any of the holders asked U.S. Bank to  
21 continue with the litigation?

22 MR. WAHL: Let me -- let me object on the  
23 privilege ground.

24 And instruct you not to answer in such a way as would  
25 compromise the privilege. You may answer if you can do so

1 without compromising.

2 THE WITNESS: I guess I can't answer  
3 that.

4 Q. (BY MR. BRENNAN) At all?

5 A. I think -- without violating the privilege, I think I can't  
6 answer that.

7 MR. BRENNAN: You know, I don't want to  
8 beat a dead horse, but I also don't want to have to  
9 unnecessarily come back and continue Ms. Jacobs' deposition.  
10 I think Finisar's position is that communications with the  
11 holders are not subject to any attorney/client privilege.

12 I'm going to ask this of Counsel: Other than the joint  
13 defense assertion, is U.S. Bank taking the position that its  
14 counsel at your firm or Morrison & Foerster is actually  
15 representing the holders?

16 MR. WAHL: I'd have to say I don't know  
17 the answer to that question, but I don't think so.

18 Q. (BY MR. BRENNAN) Ms. Jacobs, to your understanding, is either  
19 Faegre & Benson or Morrison & Foerster, who I understand is  
20 legal counsel for U.S. Bank in this litigation, also  
21 representing any of the holders in connection with this  
22 litigation?

23 A. I guess I can answer that I don't know of any formal  
24 representation arrangements with the holders and counsel.

25 Q. As I understood, you told me earlier that U.S. Bank and none

1 of the holders had entered into a joint defense agreement --  
2 an oral joint defense agreement or had even discussed the  
3 subject of a joint defense. Do you know whether a written  
4 engagement agreement was provided by U.S. Bank's counsel to  
5 any of the holders?

6 A. I don't believe so.

7 Q. Were any of the holders offered to be represented by U.S.  
8 Bank's counsel?

9 A. Were they offered -- did U.S. Bank's counsel offer to  
10 represent them; is that what you're asking?

11 Q. Yes.

12 A. I don't believe so.

13 Q. In any of the discussions with any of the holders -- reported  
14 holders, were the holders told that the discussions were  
15 going to be treated as attorney/client privileged?

16 MR. WAHL: I'm going to object -- let me  
17 think.

18 I think that violates the attorney/client privilege to  
19 be talking about the attorney/client privilege, what the  
20 implications are. I'll object as privilege grounds and  
21 instruct her not to answer.

22 MR. BRENNAN: I understand. I won't  
23 agree, but I'll understand in making the objection. The  
24 point of it is I think I'm entitled to test the parameter of  
25 the claim of privilege. It does seem to me that a



1 permissible claim of inquiry is whether someone was told that  
2 there was an expectation that the communication would be  
3 privileged, and you're not even letting me ask that.

4 MR. WAHL: Right, because I'm assuming  
5 that's going to come in the context of an attorney/client  
6 communication under this part of the joint defense privilege,  
7 and I think the "yes" or "no" there would violate that  
8 privilege.

9 MR. BRENNAN: Well, here's, I think, part  
10 of the problem. Were Finisar to challenge the assertion of  
11 the joint defense privilege, you know, one -- I think we've  
12 done a lot of it -- one would go to the judge and say, Don't  
13 have a written agreement. Don't have an oral agreement.  
14 Haven't even discussed the subject of a joint defense with  
15 the other participants. Tried to find out whether there was  
16 an assertion or a suggestion to the other participants --  
17 i.e., the holders -- that the communications might be  
18 privileged. So you're not even going to let me find that  
19 out. And I'm struggling to find out what -- you know, what  
20 leg of the stool is still out there to support a joint  
21 defense privilege.

22 So I'm just asking you to reconsider the instruction  
23 not to answer on the other -- that was even suggested to the  
24 holders that the communications might be privileged.

25 MR. WAHL: I thank you for that

1 opportunity, but I decline to reconsider.

2 Q. (BY MR. BRENNAN) Have any of the holders told you or any  
3 other representative of U.S. Bank that they wished to have  
4 the communications treated as privileged?

5 A. Have they told me or any other --

6 Q. U.S. Bank representative.

7 A. -- U.S. Bank representatives that they wish to have the  
8 communications privileged?

9 MR. WAHL: And as U.S. Bank  
10 representatives, are you including outside counsel?

11 MR. BRENNAN: Yes.

12 MR. WAHL: Same objection.

13 Q. (BY MR. BRENNAN) So if -- just so I understand this: Is it  
14 the position of U.S. Bank that if some third party were to  
15 ask U.S. Bank or its counsel to treat the communications as  
16 privileged, that U.S. Bank in an effort to establish the  
17 privilege would not even allow that question to be answered?

18 MR. WAHL: Is the third party -- I guess  
19 I don't have enough to answer that. You're not putting me  
20 under oath.

21 MR. BRENNAN: I'm not asking. The third  
22 party is the holders.

23 MR. WAHL: If we're talking about  
24 holders, my position is they have an identity interest and it  
25 gives rise to a joint defense privilege. Whether the

1 Q. And counsel prepared the summary?

2 A. Yes.

3 Q. And -- are you aware of any SEC filing by Finisar that  
4 specifically suggested that Finisar would not be able to make  
5 interest or principal payments under any of the notes that  
6 are the subject of this litigation?

7 A. I don't recall a specific statement as to whether they were  
8 going to pay principal payments on those notes.

9 Q. Have any of the holders -- purported holders ever expressed  
10 any concern about the financial condition of Finisar?

11 MR. WAHL: You can answer that "yes" or  
12 "no," please, with respect to the attorney/client privilege.

13 THE WITNESS: I'm sorry. Did you ask me  
14 if I can answer "yes" or "no"?

15 MR. WAHL: That would be a "yes" or "no"  
16 question.

17 THE WITNESS: Yes.

18 Q. (BY MR. BRENNAN) And what noteholders have made such a  
19 statement or suggestion?

20 A. I believe all three of the holders we were in discussions  
21 with.

**REDACTED**  
-Pursuant to Protective Order-

23 with that regard?

24 MR. WAHL: I would instruct you not to  
25 answer unless you can answer without compromising the

1 attorney/client privilege.

2 THE WITNESS: Yeah, I can't -- I mean, I  
3 can just answer that there's general concern about Finisar's  
4 financial health.

5 Q. (BY MR. BRENNAN) What about its financial health is the  
6 concern?

7 A. Yeah --

8 MR. WAHL: Same objection.

9 THE WITNESS: -- that's all I can say.

10 Q. (BY MR. BRENNAN) Do you know what the basis is for the  
11 concern?

12 MR. WAHL: Same objection.

13 THE WITNESS: I can't answer.

14 Q. (BY MR. BRENNAN) I'm sorry?

15 A. No, I can't answer that.

16 Q. Because of client privilege?

17 A. Yes.

18 Q. U.S. Bank was taking a position for a time that it need not  
19 return certain collateral to Finisar, right?

20 A. Yes.

21 Q. And what was the basis for that position?

22 A. I think that counsel explained the basis as that it would --  
23 it legally should be handled in the motion for summary  
24 judgment.

25 Q. And when Finisar threatened to sue U.S. Bank over its

1 position regarding the collateral, U.S. Bank decided to  
2 return the collateral, right?

3 A. Yes.

4 Q. And was U.S. Bank taking the position that it need not return  
5 the collateral because Finisar was in a continuing state of  
6 default?

7 MR. WAHL: Let me instruct you not to  
8 answer if it compromises the privilege. Answer if you can  
9 without doing so.

10 THE WITNESS: Yeah, I can't without  
11 compromising privilege.

12 Q. (BY MR. BRENNAN) Well, are you aware of the statements of  
13 U.S. Bank's counsel to Finisar's counsel exactly on that  
14 point?

15 MR. WAHL: Well, that's why I let the  
16 previous answer go and that's why I said, Answer if you're  
17 able.

18 MR. BRENNAN: I guess what I'm saying, I  
19 don't know how we can claim privilege on this when that's  
20 precisely what Mike Fisco told me.

21 MR. WAHL: We would claim privilege  
22 because whatever Mike Fisco said or wrote in a letter is what  
23 he told you. Behind that are confidential client

24 **REDACTED**

-Pursuant to Protective Order-

25 would not be public; just as when you file a Complaint, all

1 the research and analysis you've done behind it are not  
2 discoverable.

3 Q. (BY MR. BRENNAN) Are you aware, Ms. Jacobs, as to whether  
4 U.S. Bank has ever articulated to Finisar that the reason it  
5 wasn't going to return the collateral was because Finisar was  
6 in a state of continuing default?

7 A. I guess I'm aware now because you just said that Michael  
8 Fisco conveyed that to you.

9 Q. You weren't otherwise aware of that?

10 A. I wasn't aware that he had conveyed that to you.

11 Q. But U.S. Bank did return the collateral, right?

12 A. Yes, we did.

13 Q. Is that because U.S. Bank concluded that Finisar was not in a  
14 state of continuing default?

15 MR. WAHL: Object on the privilege.

16 Answer if you can.

17 THE WITNESS: I can't answer that.

18 Q. (BY MR. BRENNAN) I'm not asking for a communication. I'm  
19 asking for the reasons as to why U.S. Bank did what it did.

20 MR. WAHL: And if the reasons are public,  
21 you may answer. If the reasons are the product or the flow  
22 from the attorney/client privilege and your only knowledge of  
23 that, you may not.

24 MR. BRENNAN: Here's where we're  
25 disagreeing. It seems to me that if a party takes certain